

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 08-0098
	)	
JEROME BROWN,	)	
Defendant.	)	

MEMORANDUM

Gary L. Lancaster,  
District Judge.

August 6, 2009

This is a criminal prosecution in which the United States charged defendant Jerome Brown with one count of distribution of 50 grams or more of a mixture and substance containing a detectable amount of cocaine base, in the form known as crack, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(iii). Trial started on August 3, 2009 and ended on August 5, 2009. The jury found defendant guilty.

During jury deliberations on August 5, 2009, the jury requested a transcript of the cross-examination of Andrea Cabbagestalk, one of the government's witnesses. Over the defendant's objection, the court responded:

No. A transcript is not available. Please recall in the beginning of the trial when I instructed you:  
At the end of the trial you must make your decision based on what you remember of the evidence. You will not have a written transcript of the testimony to review. You must pay close attention to the testimony as it is given.

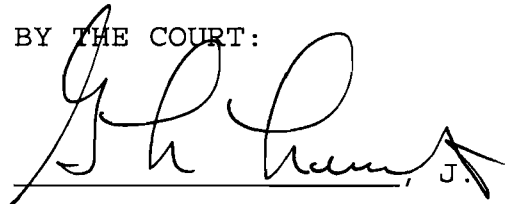
We will state our reasons for not providing the jury with the requested transcript below.

The Court of Appeals for the Third Circuit has held that a trial court may decline a jury's request for a written transcript of trial testimony if (1) such request would slow the trial; or (2) such request would cause the jury to put undue weight on the requested testimony. United States v. Bertoli, 40 F.3d 1384, 1400 (3d Cir. 1994).

The first concern was implicated here. First, there was no official transcript made of Ms. Cabbagestalk's testimony. Therefore, jury deliberations would be delayed until one was made and provided to the jury to read. Such request would have slowed the trial. Moreover, all of the trial testimony lasted for only approximately three hours and only three witnesses testified. Ms. Cabbagestalk was the last witness and her testimony concluded only approximately four hours before the jury began deliberating. Thus, the testimony was fresh in the jurors' minds and they were permitted to take notes. Therefore, we found that the delay was not justifiable under these circumstances.

Hence, for the foregoing reasons, a transcript was not prepared and given to the jury and defendant's request for this transcript was DENIED.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. H. Ham, J.", is written over a horizontal line. The signature is stylized and cursive.

cc: All Counsel of Record